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Paper No. 9

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**MAILED**

**APR 13 2004**

**Technology Center 2100**

In re Application of: Osborn )  
Application No. 09/982,601 ) **DECISION ON PETITION TO MAKE**  
Attorney Docket No. 65,270-005 ) **SPECIAL UNDER 37 CFR §1.102(d) –**  
Filed: October 18, 2001 ) **ACCELERATED EXAMINATION**  
For: METHOD OF COMMUNICATING )  
ACROSS AN OPERATING SYSTEM )

This is a decision on the renewed petition to make special filed on March 19, 2003 under 37 CFR §1.102(d), in accordance with MPEP 708.02(VIII), requesting the Accelerated Examination of the above-identified application. The Office regrets the delay in addressing the request for reconsideration that only recently came to light.

The renewed request supplements the original petition with a preliminary amendment to Claim 35, a substitute declaration by Mr. Haidle, and a copy of the International Preliminary Examination Report (IPER). Copies of USP 4,276,594, 5,276,789, and 5,296,936 were also provided along with an unidentified paper with the header "Howard & Howard Machine Job Log" with original initials and annotations thereon.

For purposes of this application only the petition will be granted. However, there remain matters unresolved.

- The copy of the PCT/IPEA/409 has been received, but since the International Search Report (the PCT/ISA/210) cited the references as "Y" references. The PCT IPER does not fully address how the specific references (without apparent amendment) now read over the claims. (Normally, the Office would issue a PCT/IPEA/408 in this circumstance. As no copy has been provided, it is assumed none was issued.)
- The explanation found in the IPER only appears to address the limitations of Claim 1 in the instant application. The petitioner is silent as to whether the claims in the PCT were identical to the claims in the instant application. It is unknown what was the scope of the invention under consideration in the PCT application.
- The substitute declaration selects three US patents as the "closest prior art references." However, in each separate discussion, the practitioner appears to repeat the limitations found in Claim 1 except for the step of detecting an event. This begs the question of why the practitioner thought these were the closest related art. In essence, the practitioner is stating

that none of the cited art has any of the steps claimed. The practitioner has chosen to discuss the prior art in terms of the disclosure of the respective references and not in the language of his own claimed invention. In addition, the discussion barely passes muster as to whether it addresses with the particularity required by 37 CFR 1.111(b) and (c) how the claimed subject matter is patentable over the references.

The petition is **GRANTED**. The application has been granted special status. The practitioner is advised to address the noted deficiencies with further clarification in future petitions.

The applicant is advised that unless the prior art is cited on an Information Disclosure Statement (PTO-1449 or 892) the examiner may not have considered the references found in this petition or in the related PCT application.

The application is being forwarded to the Technical Support Staff for processing of applicant's preliminary amendment. Thereafter, prosecution of the application will proceed according to the procedure set forth in MPEP 708.02(VIII) and will be forwarded to the appropriate art unit for examination. Applicant is reminded that there is no provision for "withdrawal" from this special status.



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